

### **REMARKS**

The above-captioned patent application has again been carefully reviewed in light of the final Office Action to which this Amendment is responsive. Claims 1, 10, and 13 have been amended to clarify the combination claimed herein. Claims 14-17 have been added and Claims 4, 5, 11, and 12 have been canceled. To that end, it is believed no new matter has been added.

Claims 1, 4, 5, and 8-13 are pending, Claim 4 having been withdrawn from consideration based on an earlier Restriction Requirement. Claims 1, 5 and 8-13 have been rejected based on certain prior art. More particularly, Claims 1, 5 and 11-13 have been rejected under 35 USC §103(a) as being unpatentable over Locarno (U.S. Patent No. 5,288,001) in view of Conte (U.S. Patent No. 6,634,531) and Hebert et al. (U.S. Patent No. 5,839,631), and Claim 8 has been rejected based on the combination of Locarno, Conte and Hebert et al. and further in view of Sanders (U.S. Patent No. 5,134,331). The Examiner has also rejected Claims 1 and 11 based on 35 USC §112, first paragraph, and Claim 11 based on 35 USC §112, second paragraph. Claims 1, 4, and 5 have been objected to based on certain formalities. Finally, the Examiner has also requested that Applicant furnish a supplemental oath/declaration in compliance with 37 CFR §1.67(a).

Applicant gratefully acknowledges the allowability of Claims 9 and 10 over the prior art of record. Reconsideration is respectfully requested based on the new and amended claims, as well as the following discussion.

### **Claim Rejections**

Prior to discussing the prior art rejections in detail, Applicant would like to discuss the novel contributions made by the present combination. That is, a carrier is disclosed that is configured to retain an oxygen bottle and more specifically a carrier that can be used in conjunction with one or more orthopedic appliances, including at least one of a wheelchair and a walker. The carrier is defined by a flexible open-topped bag or container that snugly retains the oxygen bottle in which the open-top and more

specifically, a peripheral mouth portion of the container, includes an internal rigid plastic peripheral portion that is sufficiently stiff; that is, as compared with the remainder of the container, to provide adequate stiffness and moreover to maintain a predetermined shape and size that defines an opening adjacent the top of the container which permits ingress of an oxygen bottle, thus enabling the carrier to receive an oxygen bottle, for example, while the carrier is still attached to the orthopedic appliance.

That is, the carrier can remain attached to the orthopedic appliance without having to first remove the carrier and then attempt to insert a bulky oxygen bottle into the flexible container, usually while the container is lying on the floor. As such, the present carrier apparatus enables an oxygen bottle to be retained in a vertical attitude without requiring removal of the carrier from the orthopedic appliance, thereby greatly easing the ability to swap depleted oxygen bottles out of the carrier and introduce newly charged bottles therein. Additionally, establishing a maintained and predetermined shape and size for the container opening or mouth allows oxygen bottle insertion to be accomplished by only a single person. The carrier includes an upper oxygen bottle retaining portion above the peripheral mouth portion which is highly flexible, like the remainder of the carrier. A drawstring permits the closure of the upper end of the container though the rigid internal peripheral portion maintains the shape and size to retain the larger portion of the oxygen bottle.

Turning to the prior art rejections, the Examiner has rejected Claims 1, 5 and 11-13 under 35 USC §103(a) as being unpatentable over Locarno, in view of each of Conte and Hebert et al. Applicant respectfully traverses the above rejection.

In order to successfully maintain a "prima facie" obviousness rejection under the Statute, each and every essentially claimed limitation must be found in or suggested by the cited prior art, either singly or in combination. Those limitations that are not found in or suggested by the prior art must be notoriously well known to one of sufficient skill in the field of the invention at the time thereof. There must also be a motivation found in the prior art as a whole to make the purported combination. Such a combination cannot be the result of piecemeal combination of references using impermissible hindsight (i.e.,

advance knowledge) of the invention. To that end, each reference should be read in its entirety. A purported combination should not either destroy or seriously impair the teachings of the references so as to actually "teach away" from the purported combination. In addition, the motivation should be suggested to one of "ordinary skill" in the field of the invention. Therefore, the references used to combine should come from sufficiently analogous fields that would be consulted by one of ordinary skill confronted with Applicant's problem at the time of the invention.

Locarno describes an oxygen tank carrier for use in a wheelchair, including a carrier 2 having a receptacle for receiving an oxygen bottle through its top opening. The entire cylindrical portion or carrier of this reference is constructed from a flexible material. "In this regard, it will be understood that pouch 2 and the several straps and tails heretofore described are formed from a suitable flexible fabric material such as heavy duty waterproof Nylon" (see col 3, lines 37-41 of Locarno). That is, Locarno merely provides a flexible circular top opening constructed by the stitching of various flexible fabrics, including straps and a carrier sleeve. Therefore, Locarno fails to teach, describe, or remotely suggest the use of an internal peripheral rigid plastic section adjacent the top of the open mouth of its carrier that maintains a predetermined shape and size in order to facilitate easy oxygen bottle insertion.

It would appear that in order to effectively load an oxygen bottle into the carrier of Locarno, a person would either have to remove the carrier from the wheelchair, place it on a horizontal surface, and then slide the bottle into the carrier; or alternatively, a person would have to obtain the assistance of another person to hold the top of the carrier open to allow for bottle insertion.

The secondary reference to Conte describes a pocket or storage system used for attaching to support surfaces of ambulatory aids, such as crutches and walkers (see Fig. 8 of Conte). The storage system includes a flexible member having a pocket having at least one open end to receive articles, a closed end, at least one pocket

securing member attached to the back of the pocket proximate to the open end, and at least one stabilizing strap that is affixed to the back of the pocket proximate to the closed end.

Like Locarno, as discussed previously, Conte fails to teach, describe, or remotely suggest the use of an internal peripheral rigid plastic section provided at the open mouth that maintains a predetermined shape and size to facilitate easy insertion of an oxygen bottle or other object. This member merely includes a top opening that is somewhat flexible between open and closed. No teaching is provided concerning the maintenance of an opening having a specific predetermined shape and size, as in the present combination. "The pocket can be made of any soft material such as hemp cloth, cotton cloth, polyester cloth and blends, nylon and nylon blends, silk, wool, denim, canvas or netting and are preferably washable and durable" (see col 6. lines 1-5 of Conte, emphasis added). Furthermore and looking at this reference in its entirety, none of the embodiments disclosed in Conte appear suitable to hold an object as large as an oxygen bottle.

The remaining secondary reference to Hebert et al. describes a golf ball holder having a cylindrical sleeve constructed from a flexible fabric. "In greater detail, the holder of the present invention, as mentioned above, is formed of a flexible fabric sheet material" (see col 1, lines 56-59 of Hebert et al.).

Peripheral channels are formed on each of the top and bottom of the cylindrical sleeve by folding the flexible fabric back and attaching it upon itself. Golf balls are loaded into the sleeve through a flexible top opening that is defined by one of the peripheral fabric channels, having a drawstring disposed therethrough (see Fig. 2 of Hebert et al.).

The bottom opening of the sleeve through which golf balls exit one at a time is defined by a second peripheral fabric channel having an elastic material stitched therein. The diameter of this flexible elastic bottom opening is variable. The "resting" diameter of this elastic bottom opening is slightly smaller than the diameter of a golf ball such that golf balls are retained within the confines of the sleeve until an inwardly radial

directed force is first applied to the sleeve above the lowermost golf ball (see Fig. 3 of Hebert et al. as well as col 3, line 21.). This force forces the golf ball to press against and radially expand against the elastic material such that the diameter of the bottom opening becomes sufficiently large to permit the golf ball to drop from the flexible sleeve. Upon the exit of the golf ball, the bottom opening flexibly returns to its original "resting" diameter and in this position, the remaining golf balls are again effectively retained within the flexible sleeve until another inwardly radial directed force is applied to "squeeze" another golf ball therefrom.

From the above discussion of Hebert et al., it is notable that both opening configurations, the top and the bottom, of the golf ball carrier sleeve allow for full passage of the sleeve's contents by utilizing the flexibility and elasticity of the materials and components used in its construction. Moreover, it is further maintained that the elastic material provided in the bottom of the sleeve acts to normally retain the golf balls in place. To that end, golf balls are not loaded from the bottom of the sleeve. Loading in such a manner would be quite cumbersome in that one would have to apply an outward radial force in order to first expand the "resting" diameter and then push a golf ball (or other object) in place before the opening diameter closed back to its "resting" diameter. It would be literally impossible to load golf balls through the sleeve using the opening at this smaller diameter, given that the sleeve is entirely flexible (fabric) and provides no support to engage against. Therefore, to effectively use the golf ball carrier of Hebert et al., golf balls must be loaded through the entirely flexible fabric top opening of the sleeve.

In this sense, loading is no different than Locarno, described above, in that the top opening configuration of Hebert et al. has no rigid peripheral section to hold the top opening to a predetermined shape and size. This reference merely teaches a flexible fabric and drawstring configuration having virtually no stiffness whatsoever.

Applying the teachings of the entirety of the cited references, as presently understood, if one wanted to load an oxygen bottle into a carrier using the flexible opening configuration taught by Hebert et al., assistance would be therefore needed to firmly hold the elastic material at a wider diameter in order to first insert the oxygen bottle. This is contrary to a primary feature of the present invention; namely, to allow for a single person to perform the insertion of an oxygen bottle into the carrier.

Simply stated, the plastic peripheral section of the present carrier is constructed of a rigid plastic material configured to maintain a predetermined shape and size and provide stiffness to hold the mouth portion open to facilitate oxygen bottle insertion. The plastic peripheral section is functionally different from the elastic variable diameter bottom opening described by Hebert et al. in that it functions to allow for easy insertion of an oxygen bottle into the carrier as opposed to requiring the application of external forces in order to manipulate the elastic opening in order to insert or to remove golf balls from the golf ball sleeve. The plastic peripheral section is therefore structurally and functionally different from the elastic variable diameter bottom opening that Hebert et al. describes.

As such, it is believed that the Hebert et al. reference actually teaches away from the opening of the present combination and away from a combination with Locarno and Conte to produce that which is recited in Claim 1.

Claim 1 has now been amended to clarify the present combination. To that end, Applicant now specifies that the rigid plastic peripheral section maintains a predetermined shape and size and provides stiffness to the mouth portion at the top of the flexible container to facilitate easy insertion of an oxygen bottle.

Support for the foregoing amendment is found in the specification at paragraph [0020], lines 7-10, and paragraph [0027] lines 4-10. Therefore, it is believed that no new matter has been added.

Finally, Hebert et al. is not adaptable to hold an object nearly as large as an oxygen bottle because it refers to a non-analogous field. Hebert et al. relates to a carrier that retains a plurality articles, in this case, golf balls in which the golf balls are entirely contained within the carrier. The present invention relates to the flexible support of various oxygen bottles via a carrier and the attachment of the carrier to an orthopedic appliance. The carrier retains the majority but not the entirety of the oxygen bottle, since the wearer must use the bottle and regulate flow and occasionally view the contents. In addition, golf balls are relatively light even if a plurality are stacked while a charged oxygen bottle or even an empty oxygen bottle is quite bulky and heavy and requires secure support.

Therefore and based on the foregoing reasons, it is respectfully submitted that it would not have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the cited references with Hebert et al. to provide an adequately rigid mouth of a predetermined shape and size embedded in the top of the oxygen bottle carrier to facilitate easy insertion of an oxygen bottle and render Claim 1 or any of the claims dependent therefrom obvious. Reconsideration is therefore respectfully requested.

The Examiner has also rejected Claim 8 under 35 USC §103(a) as being unpatentable over Locarno, in view of Conte and Hebert et al. and further in view of Sanders.

As noted previously, neither Locarno, Conte, nor Hebert et al., either singly or in combination, disclose a carrier having a rigid peripheral section at its top opening that maintains a predetermined shape and size to facilitate easy insertion of an oxygen bottle as recited in Claim 1.

The additional secondary reference to Sanders describes a wheelchair mounted device that provides a means for storing and carrying small to medium size "items such as sweaters, purses, and packages" (see col 2, lines 44-46 of Sanders). The device is "made of a soft fabric material" (see col 2, lines 36-37). Sanders, however, fails to

teach, describe, or remotely suggest the use of a peripheral rigid plastic section at the top of its storage device that maintains a predetermined shape and size to facilitate easy oxygen bottle insertion.

Therefore, it is respectfully submitted that it would not have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the cited references to provide an internal rigid peripheral section of a predetermined shape and size embedded in the top of the oxygen bottle carrier to facilitate easy insertion of an oxygen bottle, as now recited in amended Claim 1. Claim 8 is believed to be patentably distinct for the same reasons. Reconsideration is therefore respectfully requested.

As to the Section 112, first paragraph, rejections raised by the Examiner, Applicant has amended Claim 1, now deleting "a plastic peripheral insert" in favor of a "rigid plastic peripheral section", as defined in the specification, in an effort to more particularly point out and definitely recite this feature. To that end, it is maintained herein that the inclusion of this feature does not constitute new matter wherein the import of the feature has been discussed in greater detail in the foregoing remarks. Withdrawal of the rejection is respectfully requested.

With regard to the Section 112, second paragraph, rejections noted by the Examiner, it is believed that Applicant's cancellation of Claim 11 now renders this rejection as moot. Relevant to the features that are objected to by the Examiner, Applicant has now added new Claims 14-17. For purposes of the rejection and according to new Claim 14, the strap of the carrier is now recited in relation to the wheelchair only through functional language. It is not intended that the wheelchair is to be positively recited by Applicant.

The aforementioned new Claims 14-17 have been added to this application and it is believed that they introduce no new matter.

Claim 14 depends on Claim 1 and recites an exemplary attachment configuration of the oxygen bottle carrier to an orthopedic device utilizing adjustable upper and lower straps.



According to this claim, upper strap pairs are attached to the upper portion of the bottle carrier and include a snap fitting buckle portion at each of their strap ends such that each pair of upper straps is adapted to be looped around an upper support member on each side of an orthopedic appliance and connected using the adjustable and releasable buckles.

The lower straps each have an elongated fastener pad attached to their body and extend from each side of the bottom of the oxygen bottle carrier. Each strap has strap ends with fasteners. The straps are adapted to be looped around a vertical support member of an orthopedic appliance, pulled taut, and attached upon themselves using the strap end fastener and the elongated fastener pad attached to the strap body. Lateral adjustment is easily enabled by this configuration by varying the length of the strap end that is looped around the vertical member of the orthopedic appliance.

The adjustability of both the upper and lower strap configurations enable vertical and lateral adjustment of the oxygen bottle carrier when it is attached to the orthopedic appliance.

Claim 15 depends on Claim 1 and recites an upper bottle retaining portion including a draw string to selectively reduce the diameter of the top opening of the oxygen bottle container after it has been inserted into the carrier through the rigid peripheral plastic section embedded in top of the oxygen bottle carrier. Support for this new claim is found in the specification, paragraph [0028], at lines 1-5. Therefore it is believed that no new matter has been added.

Claim 16 depends on Claim 14 and recites that the orthopedic appliance is at least one of a walker and a wheelchair.

Claim 17 depends on Claim 14 and recites that the oxygen bottle carrier is attachable to a wheelchair.

Consideration of these new claims is respectfully requested.

**Formal Objections to Claims 1, 4, and 5**

With regard to the 37 CFR 1.75 (c) objections to Claims 4 and 5 noted by the Examiner, Applicant has canceled the claims, rendering the objection as moot. As to the objection raised in connection with Claim 1, and as noted above in the comments relating to the Section 112 rejections, Applicant has amended Claim 1 in order to provide proper antecedent basis for the term "plastic peripheral insert" by deleting same in favor of "a stiff plastic peripheral section". To that end, it is believed that each of the objections has been cured and withdrawal of same is respectfully requested.

**New Declaration Requirement**

In response to the requirement of the Examiner, Applicant herein submits a new Declaration correcting the filing date of the prior application 10/037,207. Applicant apologizes for the inconvenience caused due to the previous unintentional error relating to the submission of this document. Entry of the new declaration is herein respectfully requested.

In summary and in view of the above amendment, Applicant believes the above-captioned application is now in a condition for allowance and an expedited Notice of Allowability is earnestly solicited.

If the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicant's representative at the telephone number below.

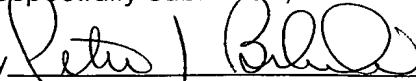
Application No. 10/726,172  
Amendment dated October 31, 2006  
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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0289, under Order No. 998\_001CIP from which the undersigned is authorized to draw.

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Respectfully submitted,

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